

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
ST. LOUIS, MISSOURI
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ST. LOUIS CITY DIV. OFFICE

THERESA M. ZEIGLER, individually;
THERESA M. ZEIGLER as mother and
next friend of MADISEN ZEIGLER,

Plaintiff,

vs.

FISHER-PRICE, INC.

Defendant.

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BY pm

CASE NO. C01-3089PAZ

RESISTANCE TO MOTION TO
PRECLUDE TESTIMONY OF
ERIC JACKSON

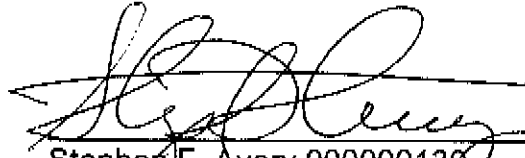
COMES NOW Plaintiff and in resistance to Defendant's motion states:

1. The opinions of Eric Jackson fall within Rule 702 and 703 of opinion testimony by experts. Eric Jackson is an electrical engineer and specifically sets forth his opinions and the basis for those opinions in Volume I of his deposition at pp. 98-101, p. 112, p. 118 lines 20-25, p. 119 lines 1-11, p. 121 lines 1-6, p. 123 lines 21-25, and p. 127 lines 3-5. In Vol III at p. 24 lines 19-23 and p. 25 lines 1-4. Those opinions take into account the items referred to as well as the depositions which Mr. Jackson had read including Jeffrey Reynolds and Joel Taft. A portion of the Reynolds' and Taft depositions are attached to this resistance. Those depositions specifically set out the knowledge of Fisher Price of overheating in the connectors.

2. The purpose of the testimony of Eric Jackson is to assist the jury on the issue of overheating in the connectors. He is an electrical engineer and can explain when the connector has been compromised how the overheating occurs. Further, Rule 703 allows the admission of the inferences.

3. In addition, under Rule 702, Eric Jackson's testimony is based on the facts and data and upon reliable electrical engineering principles which in fact are the same principles that Jeffrey Reynolds relies upon in his testimony.

Wherefore, Plaintiff requests Defendant's motion be denied.



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Original filed.

Copy to:
Kevin Reynolds
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CERTIFICATE OF SERVICE

The undersigned certifies that on 6-24-03
the foregoing instrument was served upon all parties in the
above cause by depositing a copy thereof in the U.S. Mail
postage prepaid in envelopes addressed to each of the
attorneys of record herein at their respective addresses
described in the pleadings.

Dana Andrews

Jack W. Hunt
Founder
1973-1998

Kevin H. Hunt
CSH, RPR,
President

Timothy M. Hunt
CLVS
Vice-President

Daniel C. Hunt
MCNE, CIO
Vice-President
Computer Systems



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JEFFREY REYNOLDS



THE RECORD NEVER FORGETS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT, CENTRAL DIVISION

THERESA M. ZEIGLER, individually;
THERESA M. ZEIGLER as mother and
next friend of MADISEN ZEIGLER,

Plaintiffs,

- vs -

Index Number
CO-3089MWB

MATTEL, INC., a/k/a MATTEL R.S., INC.,
d/b/a FISHER-PRICE,

Defendant.

Examination before trial of JEFFREY
REYNOLDS, taken pursuant to the Federal Rules of
Civil Procedure, in the law offices of GOLDBERG
SEGALLA LLP, 120 Delaware Avenue, Suite 500,
Buffalo, New York, on October 10, 2002, commencing
at 9:34 a.m., before ANNE T. BARONE, RPR, Notary
Public.



JACK W. HUNT & ASSOCIATES, INC.

09:58:50 1 A. We would notice that, in the vicinity of
09:58:52 2 the battery -- again, off the top of my head, the
09:58:56 3 vicinity of the battery, you could see instances
09:58:58 4 where plastic would be melted. You could see
09:59:04 5 instances where the connector may show some signs of
09:59:08 6 overheating. And back in the motor area, you would
09:59:14 7 see some melted plastic.

09:59:16 8 Q. You use reference to the connector?

09:59:18 9 A. Yes, sir.

09:59:20 10 Q. What connector are you referring to?

09:59:22 11 A. Primarily it was a white connector,
09:59:24 12 which we refer to as the H-style connector.

09:59:28 13 Q. Used to connect what?

09:59:30 14 A. The H-style connector, back in '96 I
09:59:32 15 think you asked, was on batteries. It was on
09:59:38 16 vehicles and was on battery chargers.

09:59:44 17 Q. Then let's go to '97.

09:59:48 18 A. Okay.

09:59:48 19 Q. Do you remember anything different in
09:59:50 20 '97 as opposed to '96?

09:59:52 21 A. Same patterns.

09:59:52 22 Q. Okay. What was your first knowledge
09:59:56 23 that Power Wheels was alleged to have caused a fire?

10:00:08 1 A. Probably the '95, '96 time frame.

10:00:10 2 Q. And what was your first occasion to
10:00:12 3 learn that there was an allegation that a Power
10:00:16 4 Wheels had caused a house fire?

10:00:22 5 A. '96, '97.

10:00:26 6 Q. Was there getting to be some concern
10:00:28 7 within your department that these things were
10:00:32 8 heating up and that they were alleged to have been
10:00:34 9 causing some fires?

10:00:36 10 MS. POSSENTI: Object to the form. Could you
10:00:38 11 rephrase that?

12 BY MR. AVERY:

10:00:40 13 Q. Was there concern expressed within your
10:00:42 14 department that Power Wheels were the source of
10:00:46 15 allegations that they were causing house fires?

10:00:52 16 MS. POSSENTI: I object. It's the same
10:00:54 17 question. You can answer, if you can, but note my
10:00:58 18 objection to the form of that.

10:00:58 19 THE WITNESS: Any allegation where
10:01:00 20 overheating or fire was taken very -- continues to
10:01:04 21 be taken very serious.

22 BY MR. AVERY:

10:01:14 23 Q. Okay. Maybe let me go about it this way

10:07:20 1 was an overheating problem in Power Wheels --

10:07:22 2 MS. POSSENTI: Object to the form.

3 BY MR. AVERY:

10:07:24 4 Q. -- is that right?

10:07:24 5 MS. POSSENTI: I'll object to the form of

10:07:26 6 that question and ask you to rephrase that.

7 BY MR. AVERY:

10:07:28 8 Q. You recalled 10 million Power Wheels,

10:07:32 9 correct? Fisher-Price issued a recall notice for 10

10:07:34 10 million?

10:07:36 11 A. I don't recall the -- it was in the

10:07:38 12 notice, yes, sir.

10:07:40 13 Q. And you repaired literally millions of

10:07:42 14 these, correct?

10:07:44 15 A. We repaired an awful lot of them, yes,

10:07:46 16 sir.

10:07:46 17 Q. And you did that to -- did you do that

10:07:50 18 because of allegations of overheating?

10:07:52 19 MS. POSSENTI: Object to the form.

10:07:52 20 THE WITNESS: Yes, sir.

21 BY MR. AVERY:

10:07:54 22 Q. And did that -- and you also became

10:07:54 23 aware that there were claims of a number of house

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1420 Liberty Building

Buffalo, New York 14202 - (716) 853-5600

10:11:40 1 in them or doing what people used to do in homes
10:11:44 2 where the fuse that was put in there to prevent
10:11:48 3 overcurrent, it would be replaced by I have seen
10:11:50 4 copper wires, I have seen tin foil, I have seen pop
10:11:56 5 rivets. An awful lot of components were put in that
10:12:00 6 were not Fisher-Price or Power Wheels parts.

10:12:04 7 Once the fuse was defeated, then a
10:12:06 8 hazardous -- you know, we can't stand by exactly
10:12:12 9 what would happen with our product because people
10:12:16 10 would have tampered with it. I may be too verbose
10:12:18 11 here. But, so, when you say you were talking
10:12:20 12 specifically regarding connector, a connector was
10:12:22 13 one facet of it that if somebody had tampered with
10:12:26 14 the fusing system, the connector could be liable to
10:12:30 15 overheat.

10:12:32 16 Q. And in situations where there had not
10:12:34 17 been any tampering?

10:12:36 18 A. I've seen instances where the connector
10:12:38 19 had been damaged physically. These connectors would
10:12:42 20 live in some instances in garages, you know, where
10:12:46 21 they would be prone to being stepped on, run over by
10:12:52 22 bicycles, cars, and damaged, in which case the
10:12:54 23 connector wouldn't behave as we had intended it to.

10:14:40 1 component. Or to say it another way: I haven't
10:14:44 2 jumped to any conclusions that products that may
10:14:48 3 come in that are charred or alleged to have been
10:14:50 4 involved in fire, I can't say where I know of any
10:14:54 5 that were absolutely -- you couldn't point your
10:14:58 6 finger at here's an electrical component that caused
10:15:02 7 the fire.

8 BY MR. AVERY:

10:15:02 9 Q. Why is that? So burned that you
10:15:04 10 couldn't determine it?

10:15:10 11 A. Yes. Yeah.

10:15:14 12 Q. You have seen, then, situations where
10:15:16 13 there's just a glob of plastic?

10:15:18 14 A. Yes, I have.

10:15:18 15 Q. Okay. And from that glob, you're unable
10:15:20 16 to determine where the fire started or what the
10:15:26 17 cause of the fire was?

10:15:28 18 A. Yes, that's right.

10:15:32 19 Q. Had you investigated situations -- and
10:15:36 20 I'm not asking you to say beyond any shadow of any
10:15:40 21 doubt, but just balancing it that you look at it and
10:15:46 22 think, well, I think the fire was in the component
10:15:48 23 system of the Power Wheels and I guess the cause of

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1420 Liberty Building

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10:25:10 1 the integrity of the Power Wheels product?

10:25:12 2 MS. POSSENTI: Object to the form.

10:25:18 3 THE WITNESS: There was more testing done
10:25:22 4 because the CPSC had approached us.

5 BY MR. AVERY:

10:25:26 6 Q. Why had the CPSC approached you?

10:25:30 7 A. Because they had received some
10:25:32 8 allegations of fire.

10:25:36 9 Q. Why had you not approached CPSC?

10:25:40 10 MS. POSSENTI: Object to the form.

10:25:44 11 THE WITNESS: I don't know why
10:25:44 12 Fisher-Price -- I don't necessarily know what their
10:25:48 13 obligations were or why they didn't. That wouldn't
10:25:50 14 have been my department.

15 BY MR. AVERY:

10:25:54 16 Q. Had you, at any time, been advised by
10:25:56 17 anyone in Fisher-Price as to what the obligations
10:25:58 18 are for reporting to CPSC?

10:26:04 19 A. I am generally aware of the obligations
10:26:08 20 for reporting.

10:26:08 21 Q. And how did you become aware of those
10:26:10 22 obligations?

10:26:12 23 A. My former role in quality control.

11:33:06 1 Q. Should the A connector have been
11:33:08 2 utilized earlier than it was used?

11:33:12 3 MS. POSSENTI: Object to the form.

11:33:24 4 THE WITNESS: I don't think the H-style
11:33:28 5 connector was inadequate for the job. I think the
11:33:30 6 A connector is a more robust design, but I don't
11:33:38 7 think the H-style connector, you know, an
11:33:40 8 untampered, undamaged one was unsatisfactory to be
11:33:46 9 safe and reliable.

10 BY MR. AVERY:

11:33:48 11 Q. The H connector was more susceptible to
11:33:52 12 damage through use than the A connector; is that
11:34:00 13 correct?

11:34:02 14 MS. POSSENTI: Object to the form.

11:34:08 15 THE WITNESS: I would say it could be damaged
11:34:12 16 easier than the A style.

17 BY MR. AVERY:

11:34:14 18 Q. And the H connector has a longer
11:34:20 19 life span than the A connector by virtue of its
11:34:24 20 robust design?

11:34:26 21 MS. POSSENTI: Object to the form.

11:34:28 22 THE WITNESS: Could you rephrase that? I
11:34:30 23 want to make sure I understand if you've got H and

12:55:40 1 Power Wheels were recalled in October of '98 and the
12:55:42 2 issue intended to be corrected.

12:55:48 3 First, why were they recalled?

12:55:54 4 A. They were recalled as an agreement
12:55:58 5 between Fisher-Price and the CPSC.

12:56:08 6 Q. And was there any decision which you
12:56:12 7 participated in which was a decision that there
12:56:18 8 needed to be a change in addition to the CPSC's
12:56:24 9 reasons?

12:56:24 10 MS. POSSENTI: Object to the form.

12:56:26 11 THE WITNESS: Could you rephrase that,
12:56:26 12 please?

13 BY MR. AVERY:

12:56:28 14 Q. Well, was there anything you were
12:56:30 15 addressing for a reason in the recall other than
12:56:32 16 what CPSC was saying?

12:56:40 17 A. No.

12:56:40 18 Q. One issue that you were intending to
12:56:44 19 address was the overheating?

12:56:46 20 A. Yes.

12:56:46 21 Q. What other issues were you attempting to
12:56:50 22 address in the recall?

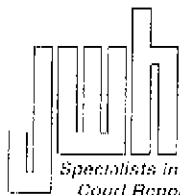
12:56:52 23 A. The fuse tampering or tampering with the

Jack W. Hunt
Founder
1973-1993

Kevin H. Hunt
C.S.R., R.P.R.
President

Timothy M. Hunt
C.L.V.S.
Vice-President

Daniel C. Hunt
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JOEL TAFT



THE RECORD NEVER FORGETS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT, CENTRAL DIVISION

THERESA M. ZEIGLER, individually;
THERESA M. ZEIGLER as mother and
next friend of MADISEN ZEIGLER,

Plaintiffs,

- vs -

Index Number
C01-3089MWB

MATTEL, INC., a/k/a MATTEL R.S., INC.,
d/b/a FISHER-PRICE,

Defendant.

Examination before trial of JOEL TAFT,
taken pursuant to the Federal Rules of Civil
Procedure, in the law offices of GOLDBERG SEGALLA
LLP, 120 Delaware Avenue, Suite 500, Buffalo, New
York, on December 12, 2002, commencing at 9:01 a.m.,
before ANNE T. BARONE, RPR, Notary Public.

JACK W. HUNT & ASSOCIATES, INC.



09:01:58 1 Q. First, maybe to get things started and
09:02:02 2 to move along, if you could just give me a quick
09:02:04 3 synopsis of your education and your work history
09:02:08 4 since graduating from your last institution.

09:02:12 5 A. Okay. My education, I have a BS in
09:02:16 6 geology from the University of Buffalo. I also have
09:02:20 7 a master's in environmental engineering from the
09:02:22 8 University of Buffalo. An MS. I worked in the
09:02:28 9 environmental engineering arena for almost nine
09:02:30 10 years with a couple different companies doing
09:02:34 11 hazardous waste site assessments, things of that
09:02:36 12 nature.

09:02:38 13 After that, I was employed with ACTS Testing
09:02:40 14 Labs, who does consumer products testing for a
09:02:44 15 variety of different types of consumer products. I
09:02:46 16 was there for about four and a half years before I
09:02:50 17 became a safety engineer for Fisher-Price October of
09:02:54 18 2000. And I've been in the safety engineering at
09:02:58 19 Fisher-Price since that time.

09:02:58 20 Q. How did you happen to get to the toy
09:03:00 21 business?

09:03:02 22 A. That was through ACTS Testing basically
09:03:04 23 because they do a lot of toy testing over there. I

09:27:48 1 MS. POSSENTI: Object to the form.

09:27:48 2 THE WITNESS: From a dollar standpoint, I
09:27:50 3 understand it was a pretty big recall.

4 BY MR. AVERY:

09:27:52 5 Q. And did they tell you why the recall
09:27:54 6 occurred?

09:27:58 7 A. It was my understanding that it was
09:28:00 8 connectors overheating.

09:28:02 9 Q. And do you recall who told you that?

09:28:08 10 A. No.

09:28:08 11 Q. In the discussion about the connectors
09:28:12 12 overheating, did you learn that they had changed the
09:28:14 13 connector?

09:28:14 14 A. Yes.

09:28:14 15 Q. From an H style to an A style?

09:28:18 16 A. That's right.

09:28:20 17 Q. I have one curiosity that I haven't had
09:28:22 18 answered, I guess. One is white in color and one is
09:28:26 19 black in color. Is that just to differentiate
09:28:28 20 between the type of connector, or is there some
09:28:30 21 reason why one's white and one's black?

09:28:32 22 MS. POSSENTI: Object to the form.

09:28:34 23 THE WITNESS: I don't know.

09:29:48 1 that with that overheating, the plastic was catching
09:29:50 2 fire?

09:29:52 3 MS. POSSENTI: Object to the form.

09:29:52 4 THE WITNESS: No.

5 BY MR. AVERY:

09:29:58 6 Q. Did they tell you what they did to solve
09:30:00 7 this complaint of overheating in the connectors?

09:30:04 8 MS. POSSENTI: Object to the form.

09:30:04 9 THE WITNESS: All I know is that, ultimately,
09:30:06 10 as a product improvement, they changed from the
09:30:10 11 H- to the A-style connector.

12 BY MR. AVERY:

09:30:12 13 Q. And that change occurred before you came
09:30:16 14 on board?

09:30:18 15 A. Yes.

09:30:18 16 Q. After you came on board, did you learn
09:30:22 17 whether there had been any complaints of overheating
09:30:28 18 in the A-style connector, which was the new one?

19 A. No.

09:30:36 20 Q. Have you ever heard of an A-style
09:30:38 21 connector overheating?

09:30:40 22 A. No.

09:30:42 23 Q. Is it your understanding that the change

09:30:44 1 to the A style then solved the overheating problem?

09:30:46 2 MS. POSSENTI: Object to the form.

09:30:50 3 THE WITNESS: It appears that the A style
09:30:52 4 does not overheat.

5 BY MR. AVERY:

09:30:52 6 Q. And then at the cage meeting, did
09:30:54 7 everybody say, the H connector was the problem; the
09:31:00 8 A style has solved the problem?

09:31:02 9 MS. POSSENTI: Object to the form.

09:31:08 10 THE WITNESS: The A style -- I don't know
09:31:08 11 whether you can say it solved the problem, but,
09:31:10 12 obviously, there are some overheatings with the
09:31:14 13 H style.

14 BY MR. AVERY:

09:31:16 15 Q. Okay. And -- okay. Was there ever any
09:31:20 16 discussion of: Well, at least we got that problem
09:31:22 17 out of the way and we're not going to have fires in
09:31:24 18 Power Wheels?

09:31:26 19 MS. POSSENTI: Object to the form.

20 BY MR. AVERY:

09:31:26 21 Q. Because of connectors at least?

09:31:28 22 MS. POSSENTI: Object to the form.

09:31:28 23 THE WITNESS: I never heard that we had fires

09:43:16 1 THE WITNESS: No. I don't get those reports.

2 BY MR. AVERY:

09:43:18 3 Q. But did you have any oral discussion
09:43:20 4 afterwards? Like, would Reynolds say, well, the
09:43:24 5 experts found such-and-such?

09:43:34 6 A. No.

09:43:34 7 Q. When those cases -- or when those boxes
09:43:36 8 of melted plastic were presented at the cage
09:43:40 9 meeting, were there any comments as to any
09:43:44 10 speculation as to what happened or what caused it to
09:43:48 11 become a box of melted plastic?

09:43:50 12 A. No.

09:43:52 13 MS. POSSENTI: Object to the form.

14 BY MR. AVERY:

09:44:14 15 Q. Can you give me an estimate of how many
09:44:16 16 times after you started with Fisher-Price that you
09:44:22 17 saw -- and I'm just asking for an estimate how many
09:44:26 18 times you saw evidence of some type of a Power
09:44:32 19 Wheels that had been in a fire.

09:44:38 20 A. Well, evidence of fire or a claim of
09:44:40 21 fire? I guess that's --

09:44:42 22 Q. Claimed fire.

09:44:42 23 A. You get a lot of claims of fires.

09:44:44 1 Q. Where you saw the product.

09:44:46 2 A. For claims of fires?

09:44:48 3 Q. Yes.

09:44:50 4 A. I can't put a number on it, but there's
09:44:52 5 numerous claims of fires.

09:44:54 6 Q. Can you give me an idea?

09:44:56 7 A. It's hard to throw a number out there.

09:45:02 8 Q. All right. As far as do you have any
09:45:04 9 idea as to how many went to forensics?

09:45:08 10 A. I want to say on the order of a dozen or
09:45:12 11 two.

09:45:14 12 Q. And do you know --

09:45:18 13 A. Let me rephrase that. It's not that
09:45:20 14 went to forensics. That was recommended to go to
09:45:22 15 forensics.

09:45:24 16 Q. All right.

09:45:24 17 A. I don't know if that ever made it that
09:45:28 18 far.

09:45:28 19 Q. And do you know, when they made the
09:45:30 20 recommendation to go to forensics, where was
09:45:34 21 forensics? Was it internal in Fisher-Price?

09:45:36 22 A. To my knowledge, our forensics expert is
09:45:38 23 someone we hire from outside the company.

09:53:28 1 overheating. Other than that, if you can't
09:53:30 2 determine it, you just state it was overheated.

3 BY MR. AVERY:

09:53:38 4 Q. Would you see reports where they said
09:53:40 5 the connectors were overheated?

09:53:42 6 A. Yes.

09:53:42 7 Q. How many of those did you see?

09:53:46 8 A. Again, it's hard to put a number onto
09:53:50 9 that, but I have seen them.

09:53:54 10 Q. And did you see -- in the case of where
09:53:56 11 there was a melted glob, did you see any reports
09:54:00 12 where they identified the cause of the overheating?

09:54:06 13 A. No. As I said, I don't get those
09:54:08 14 reports, so I don't know what happens to them.

09:54:10 15 Q. All right. You never saw those.

09:54:14 16 On the log itself, would there be any
09:54:16 17 notation on the glob -- the melted glob situations?

09:54:20 18 A. The log itself would have a
09:54:22 19 save-for-Finneran check box on there.

09:54:24 20 Q. I see. And that was a regular printed
09:54:28 21 box?

09:54:28 22 A. Right. There's a certain sheet and the
09:54:30 23 format to the sheet that has boxes you can check for